prima facie be supposed that it was improper to defend, and loss to the partnership is limited to the amount of the excess. The order of Jobling J. excluded any such excess, and it is therefore not necessary to consider whether in some circumstances it might be recoverable by the successful defender.

In *Lindley* on Partnership, 10th edition, at p. 344 the following passage occurs :—

"A partner may sue in the name of himself and co-partners without their consent; but if he sues against their consent, he must in the absence of special circumstances indemnify them against the costs. If, in the course of such an action, the co-partners refuse to obey an order made upon the firm as plaintiffs, e.g. an order for a further and better affidavit of documents, he may apply to the Court for their attachment. A managing partner has implied authority to employ a solicitor to defend an action brought against the firm and to enter appearance for all the partners in their individual names. And it is apprehended that where there is no managing partner any partner may defend an action brought against the firm, indemnifying the firm against the consequences of so doing, if he acts against the will of the other partners."

If the two sentences underlined mean only that the partner suing or defending must ensure that the inactive partner is put in no worse position than he would have been in, had the action not been brought or defended, as the case may be, I respectfully agree with the learned author. In that case, they in no way help the appellants, for, as their counsel very properly conceded, they are no worse off than they would have been if the action had not been defended. If, on the other hand, as the appellants contend, the passage means that, however great a sum may be recovered or preserved for the partnership by the action of one partner, he alone must bear the costs of recovering or preserving it, I consider that it is not supported by authority, is inherently unreasonable and is wrong. I have no doubt whatever that the passage does not bear that meaning, but the former one, and the authorities cited by the learned author tend only to support this view and not to oppose it.

Whether the matter be considered on the basis that preservation of the partnership assets is a positive duty on a partner, and that he is entitled to receive from the partnership his expenses of performing that duty, or on the basis of salvage, creating a quasi-contractual right to recover the expenses of such salvage up to the value of the property preserved, I am satisfied that the respondents were entitled to receive the sum awarded to them by the order appealed from. For these reasons, and for the reasons given by Jobling J., with which I respectfully agree, I would dismiss this appeal with costs. The costs should include any costs of that part of the appeal which was abandoned before the hearing.

Willan, C. J. : — I have read the Judgment of Briggs J. I agree with it and have nothing to add.

Spenser-Wilkinson, J. : — I agree and have nothing to add.

Appeal dismissed.

JOHN HENRY PONNAMPALAM v. NG TEONG KIAT RUBBER WORKS.

[Orig. Civ. Juris. (Willan, C. J.) March 14, 1950]

[K.L. — Originating Summons No. 14 of 1950]

Titles to Land (Occupation Period) Ordinance No. 39 of 1949, s. 27 — Procedure to be followed in proceedings under section 27 of the Ordinance — Civil Procedure Code, F.M.S., s. 472.

In this Originating Summons the applicant applied by way of Originating Summons under s. 27 of the Titles to Land (Occupation Period) Ordinance, 1949, for an order that a memorandum of transfer dated the 30th day of July 2603, made during the Japanese occupation be set aside on the ground that it was procured by coercion or duress.

Held, that proceedings under section 27 of the Titles to Land (Occupation Period) Ordinance, 1949, should be commenced by means of a suit as the use of the phrase "suit, action or other proceeding" in the section indicates that it is a suit which must be instituted and also because a suit is the only appropriate method for deciding a disputed question of fact.

ORIGINATING SUMMONS.

R. Ramani for the applicant.

T. Rajendra for the respondents.

Willan, C. J. : — The applicant applied by way of originating summons under section 27 of the Titles to Land (Occupation Period) Ordinance, 1949, (hereinafter in this judgment referred to as "the Ordinance") for an order that a memorandum of transfer dated the 30th day of July, 2603, made during the Japanese occupation, be set aside on the ground that it was procured by coercion or duress.

This matter came before me in Chambers on the 13th March, 1950, and both Mr. Ramani, Counsel for the applicant, and Mr. Rajendra, Counsel for the respondents, asked that I should give a written judgment indicating the procedure to be followed with regard to proceedings brought under section 27 of the Ordinance.

Sub-section (2) of section 27 reads :—

"Notwithstanding anything to the contrary contained in any written law, the Courts to exercise jurisdiction in any suit, action or other proceeding (in this section referred to as a 'suit') brought to set aside an instrument or the registration of an instrument executed or effected

during the occupation period on the ground of coercion or duress shall be:—

(a) If the value of the land concerned exceeds three thousand dollars in Malayan currency at the date when the suit is commenced, the High Court;

(b) If the value of the land concerned does not exceed three thousand dollars in Malayan currency at such date, the Sessions Court having jurisdiction in the District in which the land is situate."

As already stated, the applicant brought his proceedings by way of an originating summons. Mr. Ramani argued that the Ordinance is silent as to the procedure to be followed in bringing proceedings under section 27 thereof, and therefore section 472 of the Federated Malay States Civil Procedure Code applied. That section reads :—

"Any application to the Court in its civil jurisdiction, not being between a plaintiff and defendant and not being in a pending suit or matter, shall ordinarily be made by way of originating summons, unless some other mode of procedure for such application is prescribed by written law."

I am unable to agree with this argument of Mr. Ramani. It presupposes that the person seeking to obtain the order to set aside the registration of the memorandum of transfer is not in the position of a plaintiff, and that the person against whom the order is sought is not in the position of a defendant. The mere fact that they are described as "applicant" and "respondent" respectively in an originating summons does not mean that they are not in the position of a plaintiff and a defendant.

Further, I cannot agree with Mr. Ramani that the Ordinance is silent as to the procedure to be adopted in bringing proceedings. I should have thought that the use of the phrase "suit, action or other proceeding" in sub-section (2) of section 27 indicates that it is a suit which must be instituted. The word "action" is inappropriate in that phrase because the Ordinance only applies to the Malay States — see sub-section (1) of section 1 thereof; "action" is only applicable in the Settlements. I have a similar criticism as regards the use of the word "action" in sub-sections (4) and (5) of section 27.

An additional reason for instituting a suit for a remedy under section 27 of the Ordinance is that it is the only appropriate method for deciding a disputed question of fact.

The question of whether there was or was not coercion or duress is purely one of fact, not of law, and in order to decide that question of fact witnesses must give oral evidence as in an ordinary civil suit.

I must confess I am at a loss as to what meaning to give to the words "other proceeding" in the phrase set out above, and neither counsel could assist me. It may be that when the Ordinance has been in force for a longer time the meaning of those words could be clarified. For the present I have given a clear ruling of procedure that, in my view, proceedings under section 27 of the Ordinance should be commenced by means of a suit.

Accordingly, by consent, I made no order on the originating summons, and granted the applicant to that summons leave to file a suit in respect of the same subject matter on or before the 27th March, 1950.

No order made.

TEH SAY MOOI v. TAN CHOR LENG.

[App. Civ. Juris. (Hill, J.) March 14, 1950]

[Ipoh — Civil Appeal No. 2 of 1950]

Landlord and Tenant — Control of Rent Ordinance, 1948, s. 12 — Functions and powers of the Rent Assessment Board.

This was an appeal from an Order of the Rent Assessment Board, Lower Perak. The Order was as follows:— "The respondent to vacate the front portion of the premises by 30th June 1950 otherwise the applicant may apply for an ejectment order. The Board expresses the opinion that the respondent must accept any reasonable accommodation in Main Road, Bagan Datoh, and is not justified in demanding a permanent brick shop house."

Held, (1) that the first part of the Order of the Rent Assessment Board that the premises were to be vacated by 30th June 1950, was ultra vires, as the only power given to the Board by s. 12 of the Control of Rent Ordinance, 1948, is the power to give permission to a landlord to apply to a Court for an Order for ejectment; (2) that the Rent Assessment Board was correct from the evidence it heard in giving the landlord/respondent permission to apply to Court, as he had made out a prima facie case.

APPEAL from the Rent Assessment Board.

H. T. Ong for the appellant.

B. K. Das for the respondent.

Hill, J. : — This is an appeal from an Order made on 9th January, 1950, at Telok Anson by the Lower Perak Rent Assessment Board. The Order is as follows :—

"The Respondent to vacate the front portion of the premises by 30/6/50 otherwise the applicant may apply for an ejectment order. The Board expresses the opinion that the Respondent must accept any reasonable accommodation in Main Road, Bagan Datoh, and is not justified in demanding a permanent brick shop house."

So many opinions have been expressed on this fruitful source of litigation that I hesitate to add to them. There appears, however, to be considerable confusion of thought regarding a Rent Assessment Board's proper functions and powers in connection with Section 12 of Ordinance No. 6 of 1948 and I feel that I should endeavour to state my views in this connection simply and clearly in the hope that some of this confusion may be eliminated.